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AZ CORP COMMISSION  
DOCKET CONTROL

**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

DOUG LITTLE, Acting Chairman  
BOB BURNS  
TOM FORESE  
BOB STUMP

Arizona Corporation Commission  
**DOCKETED**

FEB 29 2016



In the matter of

KENNETH JOSEPH PLEIN, a married  
man,

DOCKET NO. S-20774A-10-0494

MARY KATHRYN PLEIN (a.k.a.  
"MARY KAY PLEIN"), a married  
woman,

**VICTIM'S REPLY BRIEF IN  
SUPPORT OF MOTION  
OBJECTING TO PROPOSED  
MANNER OF DISTRIBUTION OF  
VICTIMS' RESTITUTION FUNDS**

KENNETH JOSEPH PLEIN and MARY  
KATHRYN PLEIN (a.k.a. "MARY KAY  
PLEIN"), Co-Trustees of THE PLEIN  
FAMILY TRUST U/T/A dated  
DECEMBER 1, 1993,

PLEIN ENTERPRISES  
INCORPORATED (d.b.a. "TRI-STAR  
REALTY"), an Arizona corporation,

Respondents.

1 In preparing her February 1, 2016 Emergency Application, counsel for Ms.  
2 Peterson admittedly was proceeding without full awareness of the relevant facts in this  
3 matter. Ms. Peterson generally agrees with the Commission that her "argument is not  
4 with the Commission or the Division; rather it is with the Attorney General's office  
5 and application of A.R.S. § 41-191.03." Securities Division's Resp. to Mot. to  
6 Continue at 2. Nonetheless, the Commission's close involvement with the distribution  
7 of the victims' restitution funds at issue does serve as a basis for this tribunal to  
8 consider Ms. Peterson's objection.  
9

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12 In its February 12, 2016 Response to Ms. Peterson's filing, the Commission  
13 states that the "funds at issue will not be transferred to the Commission. Any issues  
14 regarding the total distribution will be handled by the Court. Therefore, there is  
15 nothing for this tribunal to rule upon." The Commission is wrong on each point.  
16

17  
18 **1. The funds at issue will be transferred to the Commission.**

19 The Attorney General's Office has caused \$1 million of victims' restitution  
20 funds to be withheld from distribution to the victims, arguing that the Attorney  
21 General is entitled to 35% of the funds for collecting a "debt owed to the state"  
22 pursuant to A.R.S. § 41-191.03(C). While the prospect of the victims losing 35% of  
23 their recovery is disconcerting in itself, neither the Attorney General's Office in the  
24 criminal matter, nor the Commission here, have addressed 191.03(D), the counterpart  
25 to subsection (C), which provides that the remaining 65% would go to either a fund  
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1 for which the monies are directly attributable, or to the state general fund. Counsel for  
2 Ms. Peterson has been informed by the Attorney General's Office that this 65% would  
3  
4 be sent to the Commission for distribution to the victims, but it remains unclear which  
5 fund these monies would go into, and how they would be handled. Thus, while Ms.  
6  
7 Peterson takes some reassurance from the Commission's statement that the  
8 "Commission takes nothing from any recovery and withholds nothing from  
9 distribution to victims," Resp. at 2, the Commission's statement that the funds will not  
10 come under the Commission's control is incorrect.  
11

12 **2. The Commission has been, and continues to be, involved in issues regarding**  
13 **the total distribution.**  
14

15 Pursuant to the court's February 2, 2016 order in the criminal matter, the  
16 Commission created and sent a "distribution formula" to the Attorney General on  
17 February 10, 2016. This formula, as far as counsel for Ms. Peterson is aware, was  
18 supposed to be a simple integration of the Commission's original restitution list  
19 (which was never provided to Ms. Peterson) and the recovery obtained by each  
20 claimant through the Defendant's bankruptcy proceedings. Ms. Peterson's personal  
21 representative, seeking to verify the Commission's calculations, submitted a public  
22 records request to the Commission requesting, among other documents, the Plein  
23 bankruptcy documents the Commission used in preparing the formula. The  
24 Commission denied this request, stating that the documents were confidential. This  
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1 denial seems to indicate that the Commission is not simply "piggybacking" on the  
2 bankruptcy court's figures, which would clearly be public record.

3  
4 While Ms. Peterson has been denied access to documents necessary to  
5 independently verify the Commission's calculations, or even information regarding  
6 which documents were used, her best efforts at calculating restitution indicate that the  
7 Commission's methodology in calculating the restitution owed to the individual  
8 victims is significantly flawed. For example, the Commission's formula appears to  
9 include restitution for certain lenders who recovered (for example, through short sale)  
10 on their secured loans through the bankruptcy proceedings. The Commission claims  
11 that these lenders are now entitled to additional compensation beyond what their  
12 secured position entitled them to, plus interest on some calculated amount. This is  
13 contrary to Arizona securities law, which exempts such secured loans from regulation  
14 as securities. A.R.S. § 44-1843(A)(10) (exempting from regulation "[n]otes or bonds  
15 secured by a mortgage or deed of trust on real estate"); see *State v. Tober*, 841 P.2d  
16 206, 208, 173 Ariz. 211, 213 (1992). Thus, the Commission, without any oversight,  
17 continues to play a significant role in determining the amount of restitution to be paid  
18 to each victim. The Commission's assertion that it is not involved with the issues  
19 regarding distribution is incorrect. In fact, the distribution formula created by the  
20 Commission and provided to the Attorney General has a significant bearing on the  
21 ultimate recovery by the victims in this matter.  
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1 **3. A ruling by this tribunal can provide the relief sought by Ms. Peterson.**

2 Ms. Peterson seeks a declaration from this tribunal that the restitution funds  
3 collected by the Attorney General's Office on behalf of the Commission were solely  
4 for victims' restitution, and not a "debt to the state" pursuant to A.R.S. § 41-191.04.  
5 Further, Ms. Peterson seeks an order providing that any funds transferred to the  
6 Commission by the Attorney General's Office shall be distributed immediately and in  
7 their entirety to the victims pursuant to a correctly prepared restitution list. Finally,  
8 Ms. Peterson seeks an order directing the Commission to provide the public  
9 documents it relied on in creating its distribution formula, as well as other such  
10 documents as are necessary to verify the appropriateness of the Commission's  
11 methodology in calculating restitution owed to each victim in this matter.  
12  
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16 **RESPECTFULLY SUBMITTED** this 29th day of February, 2016.  
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18 ASU Alumni Law Group  
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21 

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Attorneys for Victim

24 **ORIGINAL** and seven (7) copies  
25 filed this 29th day of February, 2016, with:

26 Docket Control  
27 Arizona Corporation Commission  
1200 West Washington Street  
28 Phoenix, Arizona 85007

1 **COPY** mailed and emailed  
2 this 29th day of February, 2016, to:

3 Mark Dinell  
4 Securities Division  
5 1300 West Washington, third Floor  
6 Phoenix, AZ 85007  
7 mdinell@azcc.gov

8 By:   
9 \_\_\_\_\_